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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In The Matter of	)	
	)	CS Docket No. 97-98
Amendments of Rules and Policies	)	
Governing Pole Attachments	)	

JOINT REPLY COMMENTS OF BELL ATLANTIC AND NYNEX

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Dated: August 11, 1997

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I. INTRODUCTION AND SUMMARY

Bell Atlantic and NYNEX urge the Commission to reject arguments opposing adoption of the gross book cost methodology for the Commission's pole and conduit rate formulas. The record demonstrates that use of the net book cost methodology does not result in full recovery of pole-related costs. Adoption of the gross book cost approach (with certain modifications proposed in Bell Atlantic/NYNEX's initial comments) would permit appropriate cost recovery, yet would not impose more administrative burdens than the net book approach.

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[1] The Bell Atlantic Telephone Companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc., Bell Atlantic-Maryland, Inc., Bell Atlantic New Jersey, Inc., Bell Atlantic-Pennsylvania, Inc., Bell Atlantic-Virginia, Inc., Bell Atlantic-Washington, D.C., Inc., and Bell Atlantic-West Virginia, Inc.

[2] The NYNEX Telephone Companies ("NYNEX") are New York Telephone Company and New England Telephone and Telegraph Company.

Several commenters demonstrate a misunderstanding of fundamental aspects of regulatory cost accounting, the pole attachment and conduit formula and its application. Contrary to their arguments, the formula does not permit a pole owner to overrecover costs in early years to compensate for underrecovery in later years, nor does the formula permit pole owners to double charge for certain nonrecurring charges. In addition, exclusion of entire Part 32 accounts that contain pole-related expenses, as advocated by some commenters, would violate the statutory mandate to base pole attachment rates on actual operating expenses and capital costs, and shift a portion of the cost recovery burden to other ratepayers.

The Commission should also affirm that attachers obtain no ownership rights in the utility's pole or conduit space that would entitle them to sublease facilities, and reject calls to apply to pole and conduit rates the "most favored nation" and publication requirements from the Interconnection Order recently struck down by the Eighth Circuit Court of Appeals.

Finally, the Commission should reject arguments in favor of a one-third or one-quarter convention, rather than a half-duct convention, for conduit rates. While technology today would permit the use of three or four innerducts in new conduit construction, the vast majority of embedded telephone plant contains only two innerducts. Where an electric company places innerducts in its conduit, the half-duct convention should also apply.

II. THE COMMISSION SHOULD REJECT ARGUMENTS OPPOSING THE PROPOSED ADOPTION OF A GROSS BOOK COST METHODOLOGY

A number of commenters oppose the Commission's proposal to use gross book costs instead of the currently used net book costs in the pole attachment rate formula based on a variety of baseless claims and arguments. The Commission should reject those arguments for the reasons discussed below.

A. There Is A Compelling Need To Adopt The Proposed Gross Book Cost Methodology

MCI contends that there is no need to modify the current net book cost methodology for pole attachment rates because a pole owner's pole investment account could never turn negative, despite the experience of Southwestern Bell Telephone ("SWBT") discussed in its petition.[3] Other commenters admit that use of the net book cost methodology can result in a negative pole investment account, but contend that such situations are anomalies which do not justify adoption of the proposed gross book cost methodology.[4] These arguments are demonstrably wrong.

The comments reveal that net pole attachment investment accounts in certain states of at least three of the Regional Bell Operating Companies -- SWBT, US West and Bell Atlantic -- have already turned negative based on the current net book cost

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[3] Comments of MCI at 16, discussing Southwestern Bell Telephone Company, Petition for Clarification or, in the Alternative, a Waiver, *Computation of Rates for Attachment of Cable Television Hardware to Utility Poles*, AAD 94-125 (filed Aug. 26, 1994).

[4] Comments of National Cable Television Association at 22-25 ("NCTA"); Comments of AT&T at 14-16.

methodology.[5] Moreover, NYNEX's net pole investment account in New York will soon turn negative given current trends. These situations belie the notion that there is no need to modify the current net book cost methodology as proposed by the Commission.

MCI's incorrect claim that a pole owner could never experience a negative pole attachment rate derives from its use of a rate model that contains a number of fatal flaws.[6] First, the Commission requires telephone company to analyze depreciation lives at the account level, based on grouping techniques and actuarial statistics. The resulting depreciation life is an *average remaining life*. MCI incorrectly used the depreciation of a single unit over a whole life. Second, the FCC uses *future* net salvage -- that is, the net salvage anticipated at the end of the asset life. MCI's model appears to use current net salvage, increasing over the life of the asset. MCI's approach does not comport with either the Commission's depreciation accounting requirements or Generally Accepted Accounting Principles. MCI also relies on a number of unfounded assumptions that affect the depreciation rate in MCI's model. For instance, MCI uses an exaggerated age-related trend for maintenance expense, which reflects a 300% increase over the asset life. Its model also undervalues the tax rate by ignoring all but federal income taxes. These flaws, taken together, force MCI's desired result.

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[5] *See* Comments of SWBT at 2-5; Comments of US West at 5; Joint Comments of Bell Atlantic and NYNEX at 3. As noted in the comments, Bell Atlantic-Washington D.C.'s net pole investment account is already negative. Bell Atlantic-New Jersey's net pole investment account will turn negative soon.

[6] *See* MCI, Attachment 4.

B. Use Of Gross Book Costs In The Commission's Pole Attachment Rate Formula Will Not Result In Over-Recovery

AT&T urges the Commission not to modify the current pole attachment rate formula as it applies to pole owners generally, but to grant relief on an as needed basis where pole investment accounts become negative as described in the SWBT Petition.[7] In doing so, AT&T relies, in part, on a statement in the NPRM to the effect that the current formula results in "over-recovery in the early phase of the pole's life" when, the Commission assumes, the new pole has fewer maintenance expenses associated with it.[8] This assumption is incorrect and does not support continued use of the net book cost methodology.

Pole-related maintenance expenses are not related to the age of the pole in a way that would cause a pole owner to "over-recover" costs in the early years of a pole's life, as the Commission assumed. Pole owners incur such maintenance expenses for myriad reasons, many of which have nothing to do with the age of the pole. For instance, pole owners routinely need to repair poles in the aftermath of storms, vehicle crashes and other incidents that cause damage to poles, old and new.

Perhaps more importantly, the notion that an alleged "over-recovery" of costs somehow balances the under-recovery of costs caused by including disposal costs in depreciation is itself unfounded. Pole owners never fully recover all of their costs until the original book costs of the investment and the disposal costs are both recovered.

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[7] Comments of AT&T at 15.

[8] NPRM at ¶ 25.

Future net salvage is included in the depreciation reserve; consequently, a portion of that reserve recovers disposal costs. Thus, under the current methodology, even though the net pole investment account becomes negative, the disposal costs are not fully recovered.

C. Pole Owners Have Not Inflated Net Salvage Expenses

NCTA claims that, until recently, "standard depreciation practice" had been to amortize historic investment over the anticipated useful life of the plant and that pole owners "sometimes" adjusted this practice to account for the anticipated costs of pole removal. It contends that the utilities later "found it useful to maximize cash flow" by allegedly inflating estimates of costs of compliance with environmental and disposal rules. It alleges that this "extremely aggressive accounting for net salvage" has resulted in rare instances of negative pole attachment rates, which are situations of the utilities' own making and which do not justify any modifications to the current net book cost methodology.[9] These unsubstantiated claims are utterly without merit.

First, cost of removal has always been part of the depreciation rate in standard depreciation practice. Utilities did not independently choose "sometimes" to adjust depreciation rates to account for removal costs and NCTA is wrong to state otherwise.

Second, the utilities have not inflated removal costs to maximize cash flow. Those costs have increased considerably over time as the number and stringency of environmental regulations increased. In any event, the Commission, as well as many state regulatory commissions, periodically review LEC depreciation practices, including incurred salvage and removal costs. It is absurd to suggest the utilities could and did

[9] NCTA at 21-22.

avoid such scrutiny by resorting to "aggressive" accounting practices that were in no way overseen by regulators.

D. Use Of The Gross Book Cost Methodology Is Not Burdensome

NCTA urges the Commission not to adopt the gross book cost methodology, stating that the current net book cost methodology is "administratively expedient" and would save steps that would otherwise be required if the gross book cost methodology were used.[10] Even if NCTA's observations were accurate (which they are not), they have nothing whatever to do with the real issue at hand: That use of the net book cost methodology does not always result in full recovery of pole related costs. Yet the fact is that the gross book cost methodology is no more burdensome to administer than the net book cost methodology. Computation of a pole attachment rate using the gross book cost methodology merely involves plugging figures easily derived from publicly available, verified ARMIS reports into a straightforward formula (as depicted in Attachment A hereto). Use of the gross book cost methodology presents no issues of administrative difficulty.[11]

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[10] NCTA at 25.

[11] In contrast, adoption of the Commission's alternative proposal -- that is, to continue using the net book cost methodology but to remove the net salvage amount from the accumulated depreciated balance when the net value of the poles becomes negative -- would be administratively burdensome. Thus, if anything, NCTA's concern that this rulemaking should not create administrative burdens argues against continued use of the net book cost methodology.

III. THE COMMISSION SHOULD REJECT NCTA'S ARGUMENTS AGAINST THE PROPOSED INCLUSION OF CERTAIN ACCOUNTS IN THE CALCULATION OF CARRYING CHARGES

NCTA correctly notes that there is "little dispute between pole owners and attaching parties that Account 6710 (Executive and Planning expenses) and Account 6720 (General and Administrative expenses) should be included in the administrative component" of the pole attachment rate formula.[12] NCTA, however, opposes the Commission's proposal to include in that component four additional accounts -- Account 6110 (Network Support expenses), Account 6120 (General Support expenses), Account 6534 (Plant Operations and Administrative expenses), and Account 6535 (Engineering expenses). It suggests that including Accounts 6710 and 6720 in the administrative component may already be "overly generous" to the pole owners such that there is no need to include these four other accounts in that component.[13] NCTA also contends that adoption of the Commission's proposal to include those four accounts might result in double recovery of the expenses captured in the accounts since, it claims, those expenses are already recovered in the make-ready charges paid by attachers at the time they first seek to attach to a pole.[14] NCTA is wrong in all respects.[15]

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[12] NCTA at 28.

[13] _Id_. at 29.

[14] _Id_. at 30-36.

[15] NCTA's claim that many Part 31 accounts have no analog to Part 32 accounts is also wrong. While one-for-one mappings may be difficult, they are not impossible. Thus, although NCTA states that there is no Part 31 analog for Part 32 Accounts 6723, 6724 and 6726, such analogs can, in fact, be found in Part 31 Accounts 307, 665, 672, 749 and 704, respectively.

NCTA's claim that including Accounts 6710 and 6720 in the administrative component is "overly generous" to pole owners is wholly unsupported and, indeed, undermined by NCTA's acknowledgment that these accounts are indisputably included in the calculation of a pole attachment rate. Surely NCTA would not agree to include those accounts in the calculation of rates if it believed pole owners would thereby recover more than they are due.

Contrary to NCTA's claim,[16] the fact that Account 6720 includes research and development expenses does not mean that the pole attachment formula, which recovers expenses from that account, is "overly generous." A substantial amount of research and development expense is pole-related (e.g., pole life studies and pole or ground line treatment studies) and is generated by the need to comply with increasingly stringent environmental regulations. NCTA also fails to consider the fact that a "disproportionate" share of other expenses is likely to be under-recovered using this formula. For instance, a considerable amount of legal expenses are pole-related since pole ownership requires, among other things, contract work, liability litigation, environmental compliance work, and litigation of pole regulations. Yet only a small share of such expenses are recovered in pole attachment rates.

NCTA is merely attempting to obfuscate the fundamental principle that the pole attachment rate formula allows for recovery of expenses based on reasonable assumptions and averages. The fact that Accounts 6710 and 6720 capture a wide array of general overhead expenses does not mean that those expenses ought not to be recovered in pole

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[16] NCTA at 27.

attachment rates or that including them in rates is overly generous. Poles are perhaps the most ubiquitous investments of the telephone companies and, as such, actually generate more than their share of the total expenses included in Accounts 6710 and 6720 themselves.

The four accounts NCTA would have the Commission exclude from the calculation are more plant-oriented than Accounts 6710 and 6720. Pole-related expenses are decidedly included in those four accounts and there is no reason not to include them in the determination of the pole attachment rate. Indeed, given the considerable administrative expenses associated with poles, the pole attachment formula leads to a conservative cost recovery result even if these four accounts are included in pole rates.

NCTA's claims concerning double recovery of expenses are also wrong. Make-ready costs are non-recurring costs associated with preparing the pole for a particular attacher's facilities. Make-ready charges recover those specific costs and no others. In contrast, the expenses included in the six accounts the Commission proposes to include in the administrative component of the rate formula are incurred as a result of normal operations. The pole owner incurs these expenses over and above any make-ready expenses that might be recovered through the one-time payment of make-ready charges. Moreover, the pole owner credits its maintenance expense account with make-ready charges upon receipt of payment. As a result, payment of make ready charges will never result in double recovery of the expenses included in Accounts 6110, 6120, 6534 and 6535, even where those accounts are included in the administrative component of the rate formula.

Finally, NCTA's manipulation of ARMIS data provided by Bell Atlantic-Maryland, Inc. does not provide any reason to exclude Accounts 6110, 6120, 6534 and 6535 from the administrative component of the rate formula, as proposed in the NPRM. These are all operating expenses that the Commission has recognized are necessary to the provision of regulated services,[17] and are incurred in the provision of all services provided by the Company, not merely selected services, as NCTA would have the Commission believe. Thus, excluding these accounts from the formula would be unfair to the general body of ratepayers who are not pole attachers, because a greater portion of overhead costs would have to be recovered in other ratepayers' charges.

IV. THE COMMISSION SHOULD REJECT AT&T'S ARGUMENTS THAT PAYMENT OF A POLE ATTACHMENT FEE GIVES THE ATTACHER OWNERSHIP RIGHTS

AT&T contends that a pole attachment fee relates to a specified amount of vertical space on the pole which the attacher is entitled to use without restriction and without payment of any further charges for different uses.[18] AT&T is wrong. Nothing in Section 224 confers on a pole attacher any rights of ownership, as AT&T is implicitly suggesting. To the contrary, the Commission has already determined that Section 224 "does not give [an attacher] any interest in the pole or conduit other than access."[19] Moreover, the pole owner, who is responsible for public safety and the structural integrity

[17] *See* Section 65.450(a) of the Commission's Rules.

[18] AT&T at 4-5.

[19] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("Local Interconnection Order") First Report and Order, CC Docket No. 96-98, FCC 96-325 at ¶ 1216.

of the pole, must know who and what is attaching to its poles in order to assess the effect of additional attachments on the pole's load capacity. The Commission should reject AT&T's suggestion that a pole attacher somehow gains an unfettered right to use the space it rents for as many uses and technologies as it chooses, or that it may sublease use of its space to third parties.

AT&T's contention that Section 224 permits a pole owner to collect a single charge for overlashed cables is inaccurate if the overlashed cable belongs to a third party. It is common practice within the industry to permit an attaching entity to overlash on to its existing cables on a pole without imposing an additional fee so long as the overlashed cables are used by that same entity and the entity gives the pole owner notice of the proposed overlashing arrangement.[20] But attaching entities are not permitted to allow third parties to overlash facilities for several reasons. First, as discussed above, an attaching entity has no right to "sublease" overlashing rights to a third party because it has only a right of access, not an ownership interest in the pole . Second, pole owners must be able to give their informed and express consent to such overlashing arrangements for safety reasons and in order to comply with the Commission's requirement to give notice of modification to all attaching entities . Finally, third parties would be able to evade paying their fair share of the pole costs if they could overlash onto another parties'

[20] This practice is consistent with the fact that the pole attachment formula in Section 224 (d)(1) is based upon the percentage of total usable space which is occupied by one attachment. A number of electric utilities urge the Commission to allow them to collect an additional fee for overlashed facilities. (*See, e.g.,* American Electric Power Service Corp. et al. at 72-74; and Edison Electric Institute at 36-37 ("EEI"). However, such an approach would be inconsistent with Section 224 inasmuch as it is based on the percentage of total load capacity, not total usable space, taken by an attachment.

attachment without paying the pole owner. AT&T's claim should be rejected to the extent that it suggests that third parties are entitled to evade paying an attachment fee to the pole owner by overlashing cables on a pre-existing attachment.

V. THE COMMISSION SHOULD REJECT WORLDCOM'S PROPOSAL FOR "MOST FAVORED NATION" AND RATE PUBLISHING REQUIREMENTS

Worldcom proposes that the Commission apply to pole owners the "most favored nation" and rate publication requirements it adopted in the Local Interconnection Order.[21] The Commission should reject this proposal. The Eighth Circuit Court of Appeals recently struck down those parts of the Order on which Worldcom relies in making its proposal.[22] The Iowa Utilities Board decision renders Worldcom's proposal moot. To the extent that Section 251 of the Act requires publication of interconnection agreements which may themselves include pole attachment rates, Worldcom's proposal is unnecessary. Beyond that, however, nothing in Section 224 supports the adoption of publication or most favored nation requirements in connection with pole attachment rates.

VI. THE COMMISSION SHOULD REJECT ARGUMENTS AGAINST THE PROPOSED USE OF A ONE-HALF DUCT CONDUIT CONVENTION IN SETTING CONDUIT ATTACHMENT RATES

The electric utilities[23] and AT&T[24] oppose the Commission's proposal to base conduit rates on a rebuttable presumption that the attaching entity is using half of one

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[21] Comments of WorldCom at 6-7.

[22] Iowa Utilities Board et. al. v. Federal Communications Commission, et. al., 1997 U.S. App. LEXIS 18183 (8th Cir. July 18, 1997) ("Iowa Utilities Board").

[23] *See, e.g.,* American Electric Power Service Corporation, et. al. at 85; Consolidated Edison at 6; EEI at 20; and Electric Utilities Coalition at 64.

duct. The electric companies go on at great length about the fact that differences between electric conduit and telephone conduit, as well as safety requirements, prevent any other entities from sharing conduit already occupied by an electric cable. The electric companies argue that the one-half duct conduit convention therefore cannot be applied to electric conduit and should not be adopted at all. Other commenters point out that modern duct construction allows for the use of three or four innerducts.[25] They urge the Commission to adopt a one-third or one-fourth duct convention to account for these possible construction scenarios. While these parties' underlying observations are correct, none provide any reason to depart from the one-half duct convention proposed in the NPRM.

The fact that telephone companies cannot occupy space with an electric cable is of no moment here. The presence of *any* cable in a duct precludes placement of an additional cable in that duct since pulling an additional cable through the duct would tear the existing cable. This is not to say, however, that the electric utilities cannot subdivide their conduit into ducts (as they can do and have done) or that a duct cannot be subdivided into innerducts so as to permit occupancy by more than one attacher, be it an electric utility or a telephone company. The electric utility would have the same incentives as a telephone company has to place ducts within their conduit: more efficient use of spare duct space and the ability to rent space to more attachers. Where an electric

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[24] *See* AT&T at 22.

[25] *See id.*; MCI at 25; NCTA at 42, Tele-Communications, Inc. at 16; and Time Warner at 28.

utility does place ducts in its conduit, the same rules, including the one-half duct convention, can and should apply.

The fact that modern conduit construction allows for placement of three or four innerducts does not support use of a one-third or one-fourth duct convention. A considerable amount of plant that was put in place before these modern construction practices came about and that remains in place today employs only two innerducts . Neither NYNEX nor Bell Atlantic places four inner ducts today and, therefore, the one-fourth duct convention would be meaningless as applied to them. And neither company places three inner ducts today as a matter of general practice -- in fact three inner ducts are the rare exception. The one-half duct convention is more in keeping with the state of conduit plant most likely to be found by entities seeking to place their facilities in conduit.[26]

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[26] Of course, if any attaching entity utilizes an entire duct, its conduit access rate should reflect its use of the entire duct, not half of one duct.

CONCLUSION

For the foregoing reasons, the Commission should adopt the gross book cost methodology for pole attachment and conduit rates (with the modifications proposed by Bell Atlantic and NYNEX), and reject the other proposed modifications to the pole attachment and conduit formula discussed above.

Respectfully submitted,

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Dated: August 11, 1997

APPENDIX A - POLE ATTACHMENT FORMULAS

Line	ITEM	SOURCE
1	*ADMINISTRATIVE Carrying Charge Rate*	
	Numerator	*ARMIS Report 43-02, Table I-1, Col AB, Lines 6110+6120+6534+6535+6710+6720*
	Denominator	*ARMIS Report 43-02, Table B-1, Col AF, Line 260*
2	*MAINTENANCE Carrying Charge Rate*	
	Numerator	*ARMIS Report 43-02, Table I-1, Col AB, Line 6411*
	Denominator	*ARMIS Report 43-02, Table B-1, Col AF, Line 2411*
3	*DEPRECIATION Carrying Charge Rate*	FCC prescribed depreciation rate for Pole account
4	*PROPERTY TAXES (AD VALOREM) Carrying Charge Rate*	
	Numerator	*ARMIS Report 43-02, Table I-4, Col C, Line 0940*
	Denominator	*ARMIS Report 43-02, Table B-1, Col AF, Line 2410 plus other assets that incur property taxes*
5	*RETURN and FED. INCOME TAXES Carrying Charge Rate*	

[(A / (1-C))+B] multiplied by D

where:

A = Equity Component of FCC allowed Rate of Return
B = Debt Component of FCC allowed Rate of Return
C = Statutory Tax Rate
D = Net - to - Book Ratio (shown below)

(ARMIS Report 43-02, Table B-1, Col AF, Line 2411 minus Table B-5, Col J, Line 0390 minus pole portion of Table B-1, Col BB, Line 4340) divided by (ARMIS Report 43-02, Table B-1, Col AF, Line 2411)

Line	ITEM	SOURCE
6	TOTAL POLE Carrying Charge Rate	Line 1 + Line 2 + Line 3 + Line 4 + Line 5
7	*Space Occupied by Attachment*	*1 Foot (FCC Proposal)*
8	*Total Usable Space*	*13.5 Feet (FCC Proposal)*
9	*Total Plant Investment in Poles*	*ARMIS Report 43-02, Table B-1, Col AF, Line 2411*
10	*Total Number of Poles*	*ARMIS Report 43-08, Table I.A, Col V, Row 0910*
11	*Cost per Pole*	*Line 9 / Line 10*
12	*Net Cost of a Bare Pole*	*95% FCC Adjustment*
13	*Maximum Rate*	*(Line 7 / Line 8) * Line 6 * Line 11 * Line 12*

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 1997, a copy of the foregoing "Joint Reply Comments of Bell Atlantic and NYNEX" was served by first class U.S. mail to the parties on the attached list.

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